



Appeal Decision

Site visit made on 07 November 2023

by N Robinson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd November 2023

Appeal Ref: APP/P4605/W/23/3320661

LP395 Bristol Road South, Birmingham, West Midlands B31 2AP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 16, Class A of the Town & Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by MBNL (for and on behalf of Three UK Ltd) against the decision of Birmingham City Council.
 - The application Ref 2022/06872/PA, dated 30 August 2022, was refused by notice dated 28 October 2022.
 - The development proposed is the installation of a new 18m high monopole supporting 6no. antennas with a wraparound equipment cabinet at base of column and installation of 4no. new equipment cabinets and ancillary development thereto.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO), under Article 3(1) and Schedule 2, Part 16, Class A, Paragraphs A.3(4) and (7) require the local planning authority to assess the proposed development solely on the basis of its siting and appearance, taking into account any representations received. My determination of this appeal has been made on the same basis.
3. The provisions of Schedule 2, Part 16, Class A of the GPDO do not require regard be had to the development plan. Nevertheless, the Council has referred to development plan policies in its decision notice. Similarly, the National Planning Policy Framework (the Framework) is also a material consideration. Therefore, I have had regard to the policies of the development plan, related guidance, and the Framework only in so far as they are material considerations relevant to matters of siting and appearance.

Main Issue

4. The main issue is the effect of the siting and appearance of the proposed installation on the character and appearance of the area including the setting of the grade II listed building known as Woodlands, and, if any harm would occur, whether this is outweighed by the need for the installation to be sited as proposed, taking into account any suitable alternatives.

Reasons

Character and appearance

5. The appeal site is located on Bristol Road South (A38), a busy main arterial road of a generous width, with 2 lanes of traffic in each direction separated by a wide grass central reservation. A footpath/ cycle path lines the eastern side of the southbound carriageway, and an existing mast of 10 metres in height is located on an area of grass verge on the eastern side of the road. The appeal locality is mixed in nature, comprising large commercial and residential properties set within spacious plots and a hospital.
6. The appeal site comprises an area of grassed central reservation. The central reservation and the footpath/cycle paths which line the road contain various items of street furniture, which are of a similar height or lower than the mature trees which line the road and the central reservation. The section of the central reservation subject of this appeal contains limited tree planting or street furniture.
7. The appeal site is located close to Woodlands, a grade II listed building which forms part of the Royal Orthopaedic Hospital. This building appears to derive its significance from the architectural and historic interest of its physical fabric as an example of a mid-19th-century villa, with historic interest also derived from its association with George Cadbury and the development of The Royal Orthopaedic Hospital. The lower part of the ground floor of Woodlands is screened from the road behind a boundary wall and vegetation, and there are clear views of the remainder of the front and side elevations of the building from the street scene.
8. The grass verge on which the proposed mast would be sited does not appear to have any historic connection to Woodlands and consequently it does not derive its significance from any physical connection to the appeal site. The setting of this building has been affected by the busy road to the front of the building and the modern structures which line it. Nonetheless, the open nature of this area of central reservation allows views of Woodlands, in particular from the western side of the carriageway and Whitehill Lane, which enable aspects of its significance to be appreciated, and thereby forms part of its setting.
9. The appeal proposal includes a 18m high telecom mast alongside 4 cabinets. The cabinets are not unusual features or excessive in scale. I acknowledge that the proposed mast would appear to be the minimum height and width for operational reasons and that telecommunications apparatus by their very nature must be taller than surrounding built and natural form to ensure its efficient operation. However, at 18m, it would be significantly higher and wider than streetlights, traffic lights, road signs in the surrounding area and significantly taller than nearby buildings. Appearing higher and bulkier it would not be comparable in scale or appearance to existing street furniture and would stand starkly in contrast to surrounding vertical features.
10. Given the open nature of the appeal site, the proposed mast would benefit from limited screening in short distance views. It would exceed the height of nearby trees by some margin and would be clearly visible in views from the street scene, in particular in autumn and winter months when trees lose their leaves. Whilst views of the mast for drivers would be fleeting, in all other views from the surrounding area it would stand out as an incongruous and dominant

feature within the surrounding streetscape, which would harmfully detract from the character and appearance of the area. Due to the height and appearance of the mast, even if coloured green, it would have an adverse visual effect upon the character and appearance of the area.

11. Whilst the proposed mast would not be sited immediately to the front of Woodlands, by virtue of its scale and siting it would be clearly visible in views of the building from the surrounding area, in particular when viewed from Whitehill Lane and in views looking northeast from the western side of the carriageway. In such views the mast would appear as a dominant and intrusive feature which would adversely impact upon how this building is experienced, including the ability to appreciate its architectural and historic interest. Consequently, the proposal would fail to preserve the setting of this building.
12. The identified harm to Woodlands would be visual and the proposal would not cause physical harm to the listed building. Consequently, I have assessed the harm as being at the lower end of 'less than substantial'. Nonetheless, Paragraph 199 of the Framework attributes great weight to any harm. The Framework also states that where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. I will return to this in my 'planning balance' below.
13. The appellant states that once the new mast is installed and fully integrated into the network, the existing installation would be removed. Therefore, the proposal would not result in a proliferation of masts. However, the existing installation is of a similar height to existing street furniture and trees and is sited close to them at the side of the carriageway. Whilst the proposed mast would be located further from Woodlands than the existing mast, as a consequence of its open and exposed siting within the central reservation, the proposed mast would appear more prominent than the existing installation. This, coupled with the increased height and bulk of the mast, would render it more obtrusive in views from the surrounding area, including in views of the listed building.
14. For the above reasons, whilst the appeal site is not within an area subject to a statutory designation for the protection of its character, the proposed siting and appearance of the installation would result in harm to the character and appearance of the surrounding area and harm to the setting of the listed building known as Woodlands. Insofar as they are a material consideration, the proposal would conflict with those aims of Policy PG3 of the Birmingham Development Plan (2017) (BDP), Policy DM16 of the Development Management in Birmingham Development Plan Document (2021) and Design Principle 24 of the Birmingham Design Guide (2022) BDG. Collectively these policies seek to ensure that proposals demonstrate high design quality and that telecommunications installations be sited and designed in order to minimise impact on the visual amenity and the character and appearance of the surrounding areas and do not result in unacceptable harm on heritage assets and their setting.
15. For similar reasons, insofar as it is a material consideration, the proposal would be contrary to Chapters 12 and 16 of the Framework which seek to ensure that equipment is sympathetically designed and states that great weight should be given to the conservation of heritage assets.

Need and Alternatives

16. As I have found that the mast would cause harm, Paragraph 117 of the Framework requires that evidence of alternative sites is provided to justify the proposed development. Where this is in relation to a new mast or base station, this evidence should include that the applicant has explored the possibility of erecting antennas on an existing building, mast or other structure.
17. The appellants contend that the proposal comprises a replacement mast. Consequently, it is stated that no other standalone new facilities beyond the immediate vicinity of the appeal site have been investigated. They consider this is in line with the sequential site selection process, and that by upgrading the current facility, the most sequentially preferable option has been progressed.
18. I acknowledge that to provide improved coverage to broadly the same area the location of the proposed mast will need to be close to the existing mast. I also note that the existing mast is not structurally capable of hosting the antennas required to provide 3G/4G and future technology. However, the proposed mast would be approximately 8 metres away from the mast currently in place and would be separated from it by 2 lanes of a dual carriageway. As it would be sited in a different location to the existing mast, some consideration has gone into the chosen location. Therefore, as it is not a direct replacement, there is no obvious reason why I shouldn't consider the suitability of the alternative siting. The information before me does not clearly explain why the immediate environs of the existing mast would not be suitable for the proposal, nor does it set out the search area considered for the replacement mast, or any other sites in the area that have been considered and discounted.
19. I am unable to conclude that the appellant has undertaken a thorough review of all alternative means of providing coverage within the search area in order to clearly establish that there is a need to site the proposal at this particular location. Therefore, I cannot be satisfied that the location chosen is necessarily the least harmful in terms of its visual effects. Insofar as they are relevant, I find conflict with BDP Policy DM16 and Design Principle 24 of the BDG which require that new development proposals demonstrate that there are no suitable alternative sites for telecommunications development available in the locality, ensuring the least sensitive site is selected. Insofar as it is relevant, I also find conflict with Paragraph 117 of the Framework as set out above.

Other Matters

20. My attention has been drawn to a number of decisions in which the Council found that prior approval was not required¹, other prior approval applications submitted to the Council² and other applications for telecommunications equipment on the east side of the A38³. The full details of these proposals are not before me, and I am therefore unable to draw conclusions on the similarities between this appeal and the decisions to which my attention has been drawn. I have therefore considered the appeal proposal on its individual merits and with regard to the specific circumstances of the site and its surroundings.

¹ Application references 2022/09715/PA,

² Application references 2021/07162/PA, 2009/00174/PA, 2002/06852/PA, 2001/06586/PA

³ Application references 2021/00479/PA, 2012/08452/PA, 2001/03840/PA

21. The appellant comments that the proposal followed pre-application consultation with the Council and notification of ward members. However, this does not otherwise persuade me from my findings in relation to the main issue.
22. I note that a certificate confirming that the proposed equipment complies with the requirements of the radio frequency public exposure guidelines of the International Commission on Non-Ionizing Radiation Protection (ICNIRP) has been submitted with the application. Additionally, the Council found that the mast would not harm the living conditions of the occupiers of neighbouring properties. This represents a lack of harm, which is a neutral matter.

Planning Balance and Conclusion

23. Paragraph 202 of the Framework requires that where 'less than substantial harm' occurs to a heritage asset it should be weighed against the public benefits of the proposal.
24. The Framework advises that advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being. It also outlines that the expansion of electronic communications networks, including next generation mobile technology, should be supported. The proposed development would maintain and enhance mobile telecommunication services in the local area and could be adapted to deliver 5G coverage in the future. The economic and social advantages the upgraded connectivity and technology would have to residents and businesses in the area would be a substantial benefit.
25. Conversely, the mast would cause harm to the character and appearance of the area and the setting of a listed building. Whilst that harm to the significance of the heritage asset would be at the lower end of less than substantial, the Framework nevertheless indicates that it should be ascribed great weight. The benefits of the proposal are substantial, but, given the uncertainties over whether the mast has to be sited in this location, I give those benefits only moderate weight in this decision. They do not, therefore, outweigh the harm to the heritage asset.
26. For the reasons set out above, I therefore conclude that the appeal should not succeed.

N Robinson

INSPECTOR